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# THE AMERICAN LAW REGISTER

FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA  
DEPARTMENT OF LAW.

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Edited by members of the Department of Law of the University of Pennsylvania under the supervision of the Faculty, and published monthly for the Department by BOYD L. SPAHR, Business Manager, at S. W. Cor. Thirty-fourth and Chestnut Streets, Philadelphia, Pa. Address all literary communications to the EDITOR-IN-CHIEF; all business communications to the BUSINESS MANAGER.

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NEGLIGENCE—AUTOMOBILE—CARE REQUIRED OF AN OPERATOR.—*Thies v. Thomas*, 77 N. Y. Supp. 276 (Supreme Court, 1902). A little boy six years old, while playing in the street, was run over by the defendant's automobile. Suit is here brought in negligence for the accident. The Court defined the law of negligence applicable to the case negatively by describing the duty of care legally required of an operator. Its language is as follows: "An operator of an automobile is bound to anticipate that he may meet persons at any point in the public streets and must keep a proper lookout for them and have his machine under such control as will enable him to avoid a collision with another also using proper care and caution and, if necessary, must slow up and even stop." This is his ordinary duty of care. The Court goes on to say, "Where the operator meets children of tender years, he is required to exercise more than ordinary care to avoid a collision." But the fact that the accident occurred between blocks and not at a street crossing was admitted as evi-

dence for the jury on the question of the negligence of the operator.

This is the first and, as far as our research has revealed, the only decision of a higher court in which the law of negligence has been applied to the case of an automobile. As the world has progressed, different modes of conveyance have been used—horses, wagons and carriages, stage-coaches, tram-lines, railroads, horse cars, elevated railroads, electric cars, bicycles and now steam and electric automobiles. As each of these came into use the law of negligence was enlarged and modified to apply to them. Especially in the case of the railroad and to a lesser degree in the case of the trolley car has the law been applied to changed conditions. The rapidly increasing number of automobiles demands of the courts a further interpretation of the law of negligence as applied to these new conditions. This is a question of real interest to-day. Therefore, a decision of authority upon this subject must be considered worthy of attention and careful examination.

In the English case of *Boss v. Litton*, 5 Car. & Payne, 407, 1832, Chief Justice Denman defines the rights of travelers on the highways. He says: "All persons, paralytic as well as others, have a right to walk in the road and are entitled to the exercise of reasonable care on the part of persons driving carriages along it." Viewed from the standpoint of later cases this is an extreme statement of the rights of a pedestrian on a public way. As the traffic upon city streets has become greater and the speed of travel has increased by reason of the introduction of electric railways, public policy has required the courts to limit the rights of pedestrians. This has been accomplished not so much by change in principle as by change in the interpretation of the old terms "reasonable" and "ordinary." No courts go so far as to say pedestrians have no rights on the highway, but they do demand a high degree of care of any person using the street. Drivers of vehicles are excused where this high degree of care is not exercised by foot-passengers upon the ground of contributory negligence.

Some states make a difference between the rights of ordinary teams and of cars on a street railway. A pedestrian and a private team have nearly equal rights upon the highway. The case of *Rahn v. Singer Company*, 26 Fed. Rep. 912, 1885, states the general law. The Court said, "Travelers on foot and teams have equal rights on public highways, but both are required to exercise the care and diligence that the circumstances demand at the time." So, too, in the case of *Stringer v. Frost*, 116 Indiana, 477, 1888, it was said, "The plaintiff has a right to cross the street at a crossing or elsewhere, exercising such caution and prudence as the circumstances demanded to avoid being injured, while the defendant had the right to ride along the street on horseback,

observing such watchfulness for footmen and having his animal under such control as would enable him to avoid injury to others who had corresponding and reciprocal rights in the street." The law thus holds the driver of a horse to as strict a duty of care as it does the pedestrian; each must be equally on the lookout for the other to prevent collision.

On the other hand, street cars are in some states given a superior right of way. In Pennsylvania this doctrine of superior rights has been firmly implanted in the law. It is expressed in the case of *Ehrisman v. Railway Company*, 150 Pa. 180, 1892: "Street railways have not this exclusive right [of steam railroads\*]. Their tracks are used in common by their cars and the traveling public. While this common use is conceded and is unavoidable in towns and cities, the railway companies and the public have not equal rights. Those of the railway companies are superior. Their cars have the right of way and it is the duty of the citizen whether on foot or in vehicles to give unobstructed passage to the cars. This results from two reasons—first, the fact that the car cannot turn out or leave its track, and secondly, for the convenience and accommodation of the public. These companies have been chartered for the reason, in part at least, that they are a public accommodation. The convenience of an individual who seeks to cross one of their tracks must give way to the convenience of the public." This case has been affirmed as late as 1898, in the case of *Smith v. Traction Company*, 187 Pa. 110.

Other states refuse to recognize such a doctrine and hold strictly to the old doctrine that the highway is for all equally with a reciprocal duty of care. In these states a reasonable degree of care on the part of both rider and pedestrian is required, but there is no attempt made to apply the strict "stop, look and listen" rule to the pedestrian, as is done in Pennsylvania. The case of *Laufer v. Traction Company*, 68 Conn. 475, 1897, takes this view of the law. It declares that "electric cars have no superior rights on the highway. The right to use the highway is common to all travelers and is to be so exercised by each that the just rights of the others are not unreasonably interfered with." Though apparently giving a higher right to pedestrians than does the Pennsylvania doctrine, the results are practically the same in most cases.

It does not seem necessary to discuss the correctness of either of the conflicting opinions with regard to street railways. The reasons for allowing street cars a superior right of way and peculiar privileges do not apply to the case of automobiles. The latter are private conveyances and in no sense different from horses and carriages in their use of the highway. They are not

\* Editor's words.

a public means of rapid transit and do not serve the great body of citizens. They are merely for the convenience of individuals.

Again, they are not confined to any definite track but may turn to right or left at will. Indeed they are more quickly and more easily guided than horses and carriages. This freedom of motion is one of the reasons that makes them particularly dangerous to the pedestrian. Instead of, as formerly, a single line of track to watch, he must now watch the whole street. Instead of certain streets upon which are laid car tracks, all streets alike will demand of him a high degree of care. The increased speed and comparative noiselessness add to his peril.

Common sense would seem to require of the operators of automobiles a very high degree of care upon city streets, higher than that of drivers of other vehicles. Rapid transit for the benefit of the public may be excused but a racing speed for the pleasure of individuals should not be tolerated. The foot traveler has been subjected to sufficient danger already by the street railways. Unless some restriction is placed upon the use of the highway by this new kind of conveyance, he will be practically excluded from the streets. The great number of negligence cases in our courts bear witness to the injurious effects of a high speed in thickly populated districts. And these accidents occur in spite of the fact that persons are put on their guard by the presence of tracks. With automobiles speeding up and down every street the dangers of the highway will be infinitely increased. It is for these reasons we believe the Supreme Court correct in its decisions, in applying strictly the duty of care required of drivers of horses to the new conditions. A careful consideration of the question can lead but to this conclusion. A progress which would endanger the lives of so many of our citizens is not progress and surely cannot excuse any innovation in the law of negligence.

A. L. D.

**CONSTITUTIONALITY OF THE NATIONAL BANKRUPTCY ACT—UNIFORMITY.**—*Hanover National Bank v. Moyses*, 22 Supreme Court Reporter, 857 (United States Supreme Court, October Term, 1901). By the fourth Clause of Section 8 of Article I of the Constitution the power is vested in Congress "to establish . . . uniform laws on the subject of bankruptcies throughout the United States." This power was first exercised in 1800. 2 Stat. at large 19, ch. 19. In 1803 that law was repealed. 2 Stat. at large 248, ch. 6. In 1841 it was again exercised by an Act which was repealed in 1843. 5 Stat. at large 440, ch. 9; 5 Stat. at large 614, ch. 82. It was again exercised in 1867 by an Act which, after being several times amended, was finally repealed in 1878. 14 Stat. at large 517, ch. 176; 20 Stat. at large 99, ch. 160. And on July 1, 1898, the present Act was approved. 30 Stat. at large 544, ch. 541.

Under the Constitutional provision the laws passed by Congress must be uniform, and whether the Act of 1898 provides such uniformity is the subject for consideration. Section 6 of the Act declares that "this Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition."

Practically the same clause was enacted in 1867, and a glance at the important decisions interpreting that may be of assistance to a clear understanding of the attitude taken by the courts in regard to this question. Section 14 of the Act of 1867 prescribed certain exemptions and then added: "And such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court by the laws of the state in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such state exemption laws in force in the year 1864." This section was attacked in the case of *In re Beckerford*, Fed. Cas. No. 1, 209, 1870, on the ground that it was not uniform in its application, since under its provisions the exemptions would vary in different states. But the Court declared that "though the states vary in the extent of their exemptions, yet what remains the bankrupt law distributes equally among the creditors. . . . All contracts are made with reference to *existing laws* and no creditor could recover more from his debtor under the state laws than the unexempted part of his assets, the very thing that is attained by the bankrupt law, which, therefore, is strictly uniform."

A subsequent and equally important case is that of *In re Deckert*, 2 Hughes, 183, 1874. In that case Mr. Chief Justice Waite in his opinion said: "The power to except from the operation of the law property liable to execution under the exemption laws of the several states, as they were actually enforced, was at one time questioned, upon the ground that it was a violation of the Constitutional requirement of uniformity, but it has thus far been sustained, for the reason that it was made a rule of the law to subject to the payment of debts under its operation only such property as could by judicial process be made available for the same purpose. This is not unjust, as every debt is contracted with reference to the rights of the parties thereto under *existing exemption laws*, and no creditor can reasonably complain if he gets his full share of all that the law, for the time being, places at the disposal of creditors. One of the effects of a bankrupt law is that of a general execution issued in favor of all the creditors of the bankrupt, reaching all his property subject to

levy, and applying it to the payment of all his debts according to their respective priorities. It is quite proper, therefore, to confine its operation to such property as other legal process could reach. A rule which operates to this effect throughout the United States is uniform within the meaning of that term, as used in the Constitution."

The decisions in these two cases, settled beyond question the "uniformity" of the Act of 1867, and the view expressed therein is adopted by Mr. Chief Justice Fuller in the present case of *Hanover National Bank v. Moyses* (*supra*), and by this decision any doubt which may have arisen in regard to Section 6 of the Act of 1898 is forever set at rest.

The opinion of Mr. Chief Justice Fuller is direct and to the point, and is capable of no two interpretations; it is as follows: "The laws passed on the subject (*i. e.*, bankruptcy) must, however, be uniform throughout the United States, but that uniformity is geographical, and not personal, and we do not think that the provision of the Act of 1898 as to exemptions is incompatible with the rule. Under the Act of 1867 . . . it was many times ruled that this provision was not in derogation of the limitation of uniformity because all contracts were made with reference to *existing laws*, and no creditor could recover more from his debtor than the unexempted part of his assets. We concur in this view, and hold that the system is, in the constitutional sense, uniform throughout the United States, when the trustee takes in each state whatever would have been available to the creditor if the bankrupt law had not been passed. The general operation of the law is uniform although it may result in certain particulars differently in different states."

The sentence last quoted suggests the ground upon which the correctness of the view held by the Court in this case may be doubted. That the law is settled is undoubtedly clear to all, but that the ground taken by the courts in so deciding is beyond criticism is not so clear. Is a law uniform within the meaning of that term as used in the Constitution when its results are so varied in the different states? It is suggested that what the courts have really said is this: A bankrupt law to be uniform must exempt in each state only those assets which a creditor cannot take in any other proceedings, and this is what the Act of 1898 has enacted, therefore the Act of 1898 is uniform. But does the Constitution mean that a creditor under proceedings in bankruptcy can have only those rights which he would have against his debtor in any other proceedings, or that the creditor of a bankrupt shall have the same rights against his debtor whether he be in the East or in the West, in the North or in the South? If the former be the true intent, that the exemptions under proceedings in bankruptcy must be uniform with exemptions in all other proceedings, then no objection can be raised;

but if the latter be the object intended by the framers of the Constitution, then it is submitted that the Act of 1898 fails utterly to accomplish the same. Under the present Act the following result is possible: X. is a bank in New York, and A., B., C., D. and E. are insolvent debtors of X., and they have all filed petitions in bankruptcy. A. is a citizen of New York, where he is allowed about \$1,000 in exemptions; B. resides in California and is allowed \$5,000; C. in Pennsylvania retains \$300; D. in New Castle County, Delaware, may retain only \$75, while his neighbor a few miles away in Kent County of the same state retains but \$50. Can it be said that an Act which permits such wide discrepancies among the several states is uniform throughout the United States?

In each of the three decisions quoted above the Court has resorted to the same argument in support of its decision: That "as every debt is contracted with reference to the rights of the parties thereto under *existing exemption laws*, no creditor can reasonably complain if he gets his full share of all that the law for the time being places at the disposal of creditors." Such an argument may have had some force under the Act of 1867, but it is submitted that it is utterly fallacious when applied to the Act of 1898. Section 6 of the Act allows to the bankrupt those exemptions "which are prescribed by the state laws in force *at the time of the filing of the petition.*" Now it is evident that the law with reference to which the debt was contracted and the law under which the creditor gets his share of all that is placed at the disposal of the creditors of the bankrupt may be entirely different in their provisions. Suppose for instance A. is indebted to B. upon February 1, 1902, when, under the laws of Pennsylvania, the debtor is entitled to \$300 exemptions. On February 10, 1902, the legislature passes an Act enlarging the exemptions to \$1,000, and on February 25, 1902, A. files his petition in bankruptcy. Under the Act of 1898 A. would be entitled to claim exemption to amount of \$1,000, and yet prior to this time although the same Act had been in force for more than three years all other bankrupts were entitled to retain but \$300. If such a result as this be not a delegation of the power of Congress, as Mr. Chief Justice Fuller has said, then it is submitted that it is but further evidence of the lack of uniformity in that, even in the same state, the rights of bankrupts may be so very different, although the petitions of all are filed during the time that the same Act is in force. Recognizing the fact that the Supreme Court has declared that the Act of 1898 is uniform, and bowing with all deference to that decision, it is, nevertheless, impossible for at least one humble member of the community to grasp the fact that the law enacted by Congress upon July 1, 1898, has in it those elements of uniformity which the Constitution declares to be pre-eminently essential to its existence as a legal creation.

Wm. Clarke Mason.